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27 March 1981

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FILE: Legal

MEMORANDUM FOR: Inspector General
Chief, Central Cover Staff, DDO
Assistant General Counsel for the DDO

STAT FROM:
Chief, Legislation Division, OLC

SUBJECT: Inspector General Act Amendments

1. Attached for your information is H.R. 2098, the "Inspector General Act Amendments of 1981," introduced by House Government Operations Committee Chairman Jack Brooks on 25 February 1981. The Bill would amend the Inspector General Act of 1978 (P.L. 95-452, 92 stat. 1101, 5 U.S.C. app. I) by including the Department of Defense, Justice, Treasury, and the Agency for International Development within its provisions.

2. H.R. 2098 is identical to H.R. 7893 of the 96th Congress, which passed the House on 17 November 1980, but died in the Senate Governmental Affairs Committee. The Bill was opposed by the Department of Defense and by the FBI last year, and those organizations apparently will once again attempt to ensure the proposal's defeat. Hearings on H.R. 2098 may begin as early as the week of 30 March in the House Government Operations Subcommittee on Legislation and National Security.

3. Note that H.R. 7893 as reported by the Government Operations Committee on 26 September of last year would also have included the Department of State. Between this date and 17 November, when the Bill reached the House floor, however, the Foreign Service Act of 1980 was enacted (P.L. 96-465, 17 October 1980; 94 stat. 2071, 22 U.S.C. 3901 note). Because section 209 of the Foreign Service Act established a statutory Inspector General of the Department of State and the Foreign Service, an amended version of H.R. 7893, deleting the Department of State from the proposed Inspector General Act Amendments of 1980, was offered on the House floor. This is the version that has now reappeared as H.R. 2098. A copy of section 209 of the Foreign Service Act of 1980 is attached for your information.

4. The Agency took no action to affect the legislative process with respect to this proposal last year. The focus of our analysis during the 96th Congress was on the fact that the proposed amendments did not purport to affect section 6(b)(1) of the Act, which deals with the provision of information to an Inspector General by the head of a Federal agency. I am bringing H.R. 2098 to your attention because of my understanding that it has recently been suggested that it might be advisable to evaluate this legislation from the perspective of cover and security. Please forward any comments which you may have on H.R. 2098.

5. I have also attached for your information H.R. 2137, a proposal to establish seven year terms of office for the statutory Inspectors General and to restrict the conditions under which they may be removed from office.

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Attachments

Distribution:

STAT 1 - Chuck Briggs (IG)
1 - [redacted] CS/DDO)
1 - [redacted] stant General Counsel for the DDO)
1 - [redacted] (OGC)
1 - [redacted] /S)
1 - [redacted] S/DDO)
1 - [redacted] DDA)
1 - [redacted])
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1 - FFH/GLI
1 - OLC Subject (file: Inspector General Act Amendments)
1 - OLC Chrono
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97TH CONGRESS
1ST SESSION

H. R. 2098

To amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments and agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1981

Mr. BROOKS (for himself, Mr. FOUNTAIN, Mr. FASCELL, Mr. FUQUA, Mr. LEVITAS, Mr. EVANS of Indiana, Mr. WAXMAN, Mr. HORTON, Mr. ERLÉN-BORN, Mr. BUTLER, Mr. CLINGER, and Mr. DIXON) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments and agencies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Inspector
5 General Act Amendments of 1981".

1 ESTABLISHMENT

2 SEC. 2. (a) Section 2(1) of the Inspector General Act of
3 1978 is amended—

4 (1) by inserting “the Department of Defense,” im-
5 mediately before “the Department of Education,”;

6 (2) by inserting “the Department of Justice,” im-
7 mediately after “Interior,”; and

8 (3) by inserting “the Department of the Treasury,
9 the Agency for International Development,” immedi-
10 ately after “Transportation,”.

11 (b) Paragraph (1) of section 11 of the Inspector General
12 Act of 1978 is amended—

13 (1) by inserting “Defense,” immediately before
14 “Education,”; and

15 (2) by striking out “or Transportation or the Ad-
16 ministrator of” and inserting in lieu thereof “Transpor-
17 tation, or the Treasury, the Attorney General, or the
18 Administrator of the Agency for International Develop-
19 ment,”.

20 (c) Paragraph (2) of section 11 of the Inspector General
21 Act of 1978 is amended—

22 (1) by inserting “Defense (including the Depart-
23 ments of the Army, Navy, and Air Force),” immedi-
24 ately before “Education,”;

1 (2) by inserting "Justice," immediately after "In-
2 terior,"; and

3 (3) by striking out "or Transportation or" and in-
4 serting in lieu thereof "Transportation, or the Treas-
5 ury, or the Agency for International Development,".

6 TRANSFERS

7 SEC. 3. Section 9(a)(1) of the Inspector General Act of
8 1978 is amended by striking out "and" at the end of subpar-
9 agraphs (L) and (M) and by inserting at the end thereof the
10 following new subparagraphs:

11 "(N) of the Department of Defense, the of-
12 fices of that department referred to as the 'De-
13 fense Contract Audit Agency', the 'Defense Audit
14 Service', and the 'Office of Inspector General,
15 Defense Logistics Agency', and that portion of
16 the office referred to as the 'Defense Investigative
17 Service' which has responsibility for the investiga-
18 tion of alleged criminal violations and program
19 abuse;

20 "(O) of the Department of Justice, the offices
21 of that department referred to as the 'Office of
22 Professional Responsibility', the 'Internal Audit
23 Staff, Justice Management Division', the 'Evalua-
24 tion Staff, Justice Management Division', the
25 'Office of Audit and Investigations, Office of Jus-

1 tice Assistance, Research, and Statistics', the
2 'Office of Professional Responsibility, Immigration
3 and Naturalization Service', the 'Office of Field
4 Inspections and Audit, Immigration and Naturali-
5 zation Service', the 'Office of Internal Audit,
6 United States Marshals Service', the 'Office of In-
7 ternal Investigations, United States Marshals
8 Service', the 'Program Review and Evaluation
9 Section, Office of Financial Management, Bureau
10 of Prisons', the 'Office of Inspections, Bureau of
11 Prisons', and, from the Drug Enforcement Admin-
12 istration, that portion of the 'Office of Program
13 Planning and Evaluation' which is engaged in
14 program review activities and that portion of the
15 'Office of Internal Security' which is engaged in
16 auditing and inspection activities;

17 “(P) of the Department of the Treasury, the
18 offices of that department referred to as the
19 'Office of Inspector General, Office of the Secre-
20 tary', the 'Office of Audit, Office of the Secre-
21 tary', the 'Office of Audit and Internal Affairs,
22 Bureau of Engraving and Printing', the 'Office of
23 Assistant Comptroller for Auditing, Bureau of
24 Government Financial Operations', the 'Internal
25 Audit Staff, Bureau of the Mint', the 'Division of

1 Internal Audit, Bureau of Public Debt', the 'Divi-
2 sion of Inspections and Audits, Office of Comp-
3 troller of the Currency', the 'Internal Audit Staff,
4 Federal Law Enforcement Training Center', that
5 portion of the 'Office of Inspection, Secret Serv-
6 ice', which is engaged in audit, investigation, and
7 program review activities, that portion of the
8 'Office of Internal Affairs, Bureau of Alcohol, To-
9 bacco and Firearms', which is engaged in audit,
10 investigation, and program review activities, that
11 portion of the 'Office of Audit and Systems Secu-
12 rity, Customs Service', which is engaged in audit,
13 investigation, and program review activities, and
14 the 'Division of Internal Investigations, Office of
15 Internal Security, Customs Service'; and
16 "(Q) of the Agency for International Devel-
17 opment, the office of that agency referred to as
18 the 'Office of Auditor General, Agency for Inter-
19 national Development'; and".

20 SPECIAL PROVISIONS

21 SEC. 4. (a) Section 8 of the Inspector General Act of
22 1978 is amended to read as follows:

23 "SPECIAL PROVISIONS

24 "SEC. 8. (a) The provisions of section 1385 of title 18,
25 United States Code, shall not apply to audits and investiga-

1 tions conducted by, under the direction of, or at the request
2 of the Inspector General of the Department of Defense to
3 carry out the purposes of this Act.

4 “(b) To the extent requested by the Director of the
5 United States International Development Cooperation
6 Agency (after consultation with the Administrator of the
7 Agency for International Development), the Inspector Gen-
8 eral of the Agency for International Development shall su-
9 pervise, direct, and control all audit, investigative, and secu-
10 rity activities relating to the programs and operations within
11 the United States International Development Cooperation
12 Agency with respect to the duties and responsibilities of that
13 Agency.”.

14 CONFORMING AND TECHNICAL AMENDMENTS

15 SEC. 5. (a) Section 5315 of title 5, United States Code,
16 is amended by adding at the end thereof the following new
17 paragraphs:

18 “Inspector General, Department of Defense.

19 “Inspector General, Department of Justice.

20 “Inspector General, Department of State.

21 “Inspector General, Department of the Treas-
22 ury.”.

23 (b) Section 5316 of title 5, United States Code, is
24 amended by adding at the end thereof the following new
25 paragraph:

7

1 "Inspector General, Agency for International De-
2 velopment."

3 EFFECTIVE DATE

4 SEC. 6. This Act and the amendments made by this Act
5 shall take effect October 1, 1982.

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(1) shall have full responsibility for the direction, coordination, and supervision of all Government employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(b) Any agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country, and shall insure that all of its employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

22 USC 3928.

SEC. 208. DIRECTOR GENERAL OF THE FOREIGN SERVICE.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.

22 USC 3929.

SEC. 209. INSPECTOR GENERAL.—(a)(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any general program operating responsibilities.

Removal from office; report to Congress.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

Inspections, investigations, and audits.

(b) Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

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(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 105;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c)(1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

Inspection and
audit policies
and procedures.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

Federal criminal
law, violation
reports.

(d)(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

Reports.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60

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days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Authority.

5 USC app. 6.

5 USC app. 11.

5 USC app. 6.

(e)(1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as the responsibilities of the head of an agency or establishment under section 6 (b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General or his or her designee shall prepare the performance evaluation reports for such individuals.

Complaints or information, receipt and investigation.

(f)(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

Activities and operations, review.

(g) Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

Establishment.
22 USC 3930.

SEC. 210. BOARD OF THE FOREIGN SERVICE.—The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other person-

97TH CONGRESS
1ST SESSION

H. R. 2137

To amend the Inspector General Act of 1978 to establish seven-year terms of office and to restrict the conditions under which Inspectors General may be removed from office, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1981

Mr. LEVITAS introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend the Inspector General Act of 1978 to establish seven-year terms of office and to restrict the conditions under which Inspectors General may be removed from office, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. Section 3(b) of the Inspector General Act of
4 1978 (5 U.S.C. App.) is amended—

5 (1) by inserting immediately before the period at
6 the end of the first sentence the following: “for neglect

1 of duty or malfeasance in office, but for no other
2 cause"; and

3 (2) by inserting immediately before such first sen-
4 tence the following new sentence: "The term of office
5 of an Inspector General shall be seven years from the
6 date on which such appointment is confirmed, except
7 that an Inspector General may continue to serve (for
8 not more than one year) until his successor has taken
9 office."

10 SEC. 2. Section 208(a)(3) of the Department of Energy
11 Organization Act (42 U.S.C. 7138(a)(3)) is amended—

12 (1) by inserting immediately before the period at
13 the end of the first sentence the following: "for neglect
14 of duty or malfeasance in office, but for no other
15 cause"; and

16 (2) by inserting immediately before such first sen-
17 tence the following new sentence: "The term of office
18 of an Inspector General shall be seven years from the
19 date on which such appointment is confirmed, except
20 that an Inspector General may continue to serve (for
21 not more than one year) until his successor has taken
22 office."

23 SEC. 3. Section 202(c) of the Act of October 15, 1976
24 (42 U.S.C. 3522(c), Public Law 94-505), is amended—

1 (1) by inserting immediately before the period at
2 the end of the first sentence the following: "for neglect
3 of duty or malfeasance in office, but for no other
4 cause"; and

5 (2) by inserting immediately before such first sen-
6 tence the following new sentence: "The term of office
7 of an Inspector General shall be seven years from the
8 date on which such appointment is confirmed, except
9 that an Inspector General may continue to serve (for
10 not more than one year) until his successor has taken
11 office.".

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